

201 KAR 11:430. Procedure for criminal records background check - disciplinary action against licensees for acts committed before or during the application process.

RELATES TO: KRS 324.045, 324.990, 28 C.F.R. 16.30-16.33

STATUTORY AUTHORITY: KRS 324.045(4), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 324. KRS 324.045(4) authorizes the Real Estate Commission to promulgate an administrative regulation to require a criminal background check prior to licensure. This administrative regulation establishes requirements for a criminal background check for licensure applicants and for applicants for licensure through reciprocity and sets certain standards for the licensees and to protect the public.

Section 1. Prior to taking a licensure examination, an applicant shall request a copy of the applicant's identification record. (1) The applicant may request a copy of his or her identification record from the Federal Bureau of Investigation pursuant to the provisions of 28 C.F.R. 16.30 to 16.33 or from any other commission-approved criminal background-checking provider or company furnishing identification records that are comparable to those provided by the Federal Bureau of Investigation, as determined by the commission.

(2) An applicant seeking licensure through a reciprocal agreement shall request the Federal Bureau of Investigation identification record, or the identification record of a commission-approved alternate provider, prior to applying for licensure with the Kentucky Real Estate Commission.

Section 2. (1) Upon receipt of the identification record of the Federal Bureau of Investigation, or of a commission-approved alternate provider the applicant shall:

(a) Submit the original identification record to the Real Estate Commission within five (5) days of the applicant's receipt of it if the identification record reveals:

1. Any felony conviction regardless of when the conviction occurred; or
2. A misdemeanor conviction within the five (5) years previous to the applicant's receipt of the identification record; or;

(b) Submit the identification record to the Real Estate Commission at the time of application if it does not indicate:

1. A felony conviction at any time; or
2. A misdemeanor conviction within the previous five (5) years.

(2) If the Real Estate Commission receives an identification record which reveals a felony conviction, or a misdemeanor conviction within the previous five (5) years, the Real Estate Commission shall investigate the conviction and may, at its discretion, investigate any charges that are revealed by the identification record or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

(3) Following the completion of the investigation, the Real Estate Commission shall review the investigation report and shall:

(a) Order the applicant to appear before the commission for a hearing pursuant to KRS 324.045 and Chapter 13B; or

(b) Allow the applicant to proceed with the licensure application without a hearing if the Real Estate Commission determines the conviction does not necessitate a hearing pursuant to KRS 324.045.

(4)(a) If a hearing is ordered under subsection (3)(a) of this section, the applicant shall appear before the Real Estate Commission or the Real Estate Commission's authorized

representative pursuant to KRS Chapter 13B.

(b) The hearing shall determine whether the applicant meets the standards of KRS 324.045 and shall consider:

1. The nature of the crime;
2. Whether the crime indicates the applicant's untrustworthiness or incompetence in a manner that threatens the public interest;
3. Any evidence of honesty, truthfulness, and good reputation of the applicant;
4. Evidence of rehabilitation by the applicant since the crime;
5. Whether the applicant has received written confirmation from a principal broker willing to accept the applicant as an associate upon licensure;
6. Whether the applicant is currently under probation, parole, or other state supervision or reporting requirements as a condition of any criminal sentence; and
7. Other information relevant to the applicant's fitness to broker real estate.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the Real Estate Commission whether the applicant meets the standards of KRS 324.045. The Real Estate Commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6)(a)1. Following the hearing, the Real Estate Commission shall either approve or deny the application and notify the applicant of its decision along with a brief, written explanation of the reasons for its decision.

2. The applicant may proceed with the licensure application if the Real Estate Commission states in its order that the applicant may proceed with the licensure application.

3. If the applicant is allowed to proceed with the licensure application, the Real Estate Commission's order shall provide an expiration date by which the applicant shall take the licensure examination.

4. If the Real Estate Commission denies the application, the Real Estate Commission shall indicate in its order, if and when, the applicant will be eligible to submit a subsequent licensure application.

(b) If the Real Estate Commission's order indicates the applicant may proceed with the licensure application, the applicant shall submit a copy of the order to the Real Estate Commission with the licensure application.

(c) Failure to produce the order shall constitute grounds to deny the licensure application.

(d) The application of an applicant who is, at the time of filing, under probation, parole, or other state supervision or reporting requirements ordered by any court of the commonwealth may be denied by the commission, at its discretion. If the commission denies an application based upon one or more of these grounds, the applicant may reapply for licensure after the period of probation, parole, or other state supervision or reporting requirements has ended.

(7) An issued license shall be revoked if, while an applicant, the licensee:

(a) Received an identification report indicating a felony conviction, or a misdemeanor conviction in the previous five (5) years and the applicant did not submit the report to the Real Estate Commission for investigation as required by subsection (1)(a) of this section;

(b) Failed to request the report as required by this section; or

(c) Failed to submit the identification report with the application for licensure, as required by subsection (1)(b) of this section.

(8) If an applicant has engaged in any unlicensed brokerage activity within this commonwealth, the applicant shall, prior to the issuance of any license by the commission, disgorge all fees earned or received by him or her as a result of the unlicensed brokerage

activity. (27 Ky.R. 1661; Am. 2721; eff. 4-9-2001; 31 Ky.R. 1342; 1656; eff. 4-22-05; 32 Ky.R. 2320; 33 Ky.R. 726; eff. 10-6-06.)